

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

January 27, 2005

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 10, 2004

Case Number: TSO-0137

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." <sup>1</sup> A local DOE Security Office tentatively denied the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be granted. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's application for access authorization should be denied.

**I. Background**

The individual has been employed by a DOE subcontractor since 2002. Sometime after the individual began working for the DOE subcontractor, the DOE subcontractor requested that the individual obtain a DOE security clearance. On October 31, 2002, the individual completed a Questionnaire for National Security Positions (QNSP) in which he revealed past illegal drug use and legal problems stemming from his use of both alcohol and drugs. In August 2003, the DOE conducted a Personnel Security Interview (PSI) with the individual to explore this potentially derogatory information further. Unable to resolve the derogatory information, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a mental evaluation. The DOE consultant-psychiatrist examined the individual in January 2004, and memorialized his findings in a report (Psychiatric Report or Exhibit 6). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual is alcohol dependent and presents no evidence of rehabilitation or reformation. He further opined that the individual has abused illegal drugs on more than one occasion and is not a good candidate for rehabilitation or reformation.

---

<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In June 2004, the DOE initiated formal administrative review proceedings. The DOE first informed the individual that it possessed derogatory information that created substantial doubt regarding his eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the DOE described this derogatory information and explained how that information fell within the purview of two potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections j and k (Criteria J and K respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations and requested an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case and I conducted an administrative hearing within the regulatory time frame specified by the Part 710 regulations.

At the hearing, five witnesses testified. The DOE called one witness. The individual presented his own testimony and that of three witnesses. In addition to the testimonial evidence, the DOE submitted 10 exhibits into the record; the individual tendered two exhibits. The hearing transcript will be cited in this Decision as “Tr.” and the Exhibits will be cited as “Ex.” along with their corresponding numeric or alphabetic designation.

## **II. Regulatory Standard**

### **A. Individual’s Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security

---

<sup>2</sup> Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j). Criterion K concerns information that a person “[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law.” 10 C.F.R. § 710.8(k).

and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **B. Basis for the Hearing Officer’s Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to an individual’s access authorization eligibility in favor of the national security. *Id.*

## **III. The Notification Letter and the Security Concerns at Issue**

As previously noted, the DOE cites two potentially disqualifying criteria as bases for suspending the individual’s clearance, *i.e.*, Criteria J and K.

With respect to Criterion J, the DOE relates the following information. First, a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol dependence. Second, the individual admitted to the DOE consultant-psychiatrist that the police had arrested him in 2000 and charged him with Driving under the Influence (DUI) after he had failed a breathalyzer test. Third, the individual told the DOE during the PSI that he had been arrested in 1980 for DUI; that he drinks at least every weekend and becomes intoxicated every other weekend; that he drives while intoxicated approximately once a month; and that he intends to keep drinking in the future. The information set forth above clearly raises questions about the individual’s alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G.

As for Criterion K, the DOE cites the individual’s three drug-related arrests; his statements that he used valium, Quaaludes, muscle relaxants, opium, cocaine, LSD, mushrooms, crack, speed and marijuana in the past; and that he most recently used marijuana in December 2002 at a party. The DOE also relates that the DOE consultant-psychiatrist opined that the individual is a likely risk for continued occasional marijuana use. The information set forth above constitutes a security concern under Criterion K because the improper or illegal involvement with drugs raises questions regarding an individual’s willingness or ability to protect classified information. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline H. To the extent that the individual may have been abusing drugs, there is an additional security concern that the individual’s social or

occupational functioning may become impaired thereby increasing the risk of an unauthorized disclosure of classified information. *Id.*

#### IV. Findings of Fact

Most of the facts in this case are uncontroverted. Where there are discrepancies in the record, I will note them as appropriate.

The individual started consuming alcohol at age 15 or 16. Ex. 6 at 2; Ex. 7 at 40. On three occasions, the police arrested the individual for DUI. Ex. 6 at 2. The most recent DUI arrest occurred in 2000 after the individual registered a 2.0 on a breathalyzer administered by police. *Id.* As the result of the 2000 DUI, the individual served 10 days in jail and paid a fine. *Id.* In 2003, the individual related that he got intoxicated every weekend. Ex. 7 at 44. At that time, he described his alcohol consumption as “moderate,” although he admitted that he had lost time from work because of his drinking. *Id.* at 40. He stated in 2003 that he usually drank a 6-pack in two hours, but had consumed as many as 12-15 beers at a time. *Id.* at 39-40. In addition, the individual stated in 2003 that he had driven a vehicle under the influence of alcohol “quite a bit.” *Id.* at 42. When asked in 2003 by the DOE about his future intentions with regard to alcohol, he responded, “I’m going to keep drinking.” *Id.* at 46. The individual explained in 2003 that he liked the way alcohol made him feel but noted that he would cut back if he started feeling “bad inside my body.” *Id.* at 46-47. In January 2004, the individual told the DOE consultant-psychiatrist that he consumed as many as 12 beers in a few hours. Ex. 6 at 2. The individual also informed the DOE consultant-psychiatrist that he often drank until his speech was slurred and that he occasionally experienced tremors. *Id.* In addition, the individual revealed to the DOE consultant-psychiatrist that he had tried to stop drinking in 2000, even seeking help from Alcoholics Anonymous (AA), but was unsuccessful. *Id.*

The individual’s use of illegal drugs is extensive and long-term. By his own account, the individual started smoking marijuana at age 15 in 1976. Ex. 6 at 2. In 1979 or 1980, the individual also started to use cocaine regularly. Ex. 7 at 7. Between 1980 and 1985, the individual stated that used between 1 gram and 2.8 grams of cocaine as many as three to four times each week. *Id.* at 9-10. The individual claims to have stopped using cocaine in 1991. *Id.* at 10. The individual also admits that in a 10-year period in the 1980s and 1990s, he stole Quaaludes and valium from his mother and also purchased the same drugs from others. *Id.* at 11. He admits also to using LSD every weekend for six to 18 years.<sup>3</sup> He claims to have used “just about every kind of drug except heroin,” noting that he used opium, hash, mushrooms, crack, and speed in addition to the other drugs described above. *Id.* at 14. He explained that he has many friends who are involved in drugs. *Id.* During a PSI in 2003, the individual described his drug-related arrests in the 1980s. According to the individual, in 1986 the police suspected him of dealing drugs and, for this reason, obtained a warrant to search his house. *Id.* at 18. The police discovered marijuana during their search and arrested the individual. *Id.* In 1987, according to the individual, the

---

<sup>3</sup> The individual first told the personnel security specialist that he used LSD for 18 years. When asked to state the specific time frame during which he used this illegal drug, he stated, “between ’82 and ’87.” *Id.* at 12.

police raided his house. *Id.* at 19. The individual stated that while the police were pounding at his door, he burned marijuana in his stove before the police could enter the premises. *Id.* According to the individual, the police collected the residue of the marijuana and arrested him for possession with intent to resell. *Id.* The individual also recounted that he “got caught up in a cocaine sting” in 1987 or 1988. *Id.* at 21. He related that while the police were pursuing him, he “jumped out of the car, took off running [and] threw the cocaine over the briar patch.” *Id.* The individual stated that he was only charged with “attempted vehicular something on a police officer [and] assault on a police officer” because the police could not find the cocaine. *Id.* at 22.

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).<sup>4</sup> After due deliberation, I have determined that the individual’s access authorization should not be granted. I cannot find that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

### A. Criterion J

The DOE consultant-psychiatrist testified convincingly at the hearing that the individual suffers from alcohol dependence. Because the individual provided no probative evidence to rebut the DOE consultant-psychiatrist’s opinion,<sup>5</sup> the only issue before me is whether the individual is rehabilitated or reformed from his alcohol dependence.

The individual testified that he stopped consuming alcohol in August 2004 upon medical advice. Tr. at 32. The individual submitted into the record a letter from his primary care physician dated October 29, 2004 in which the primary care physician stated that he diagnosed the individual as suffering from hepatitis C in July 2004. Ex. A. According to the letter, the primary care physician advised the individual to discontinue all alcohol use. *Id.* The individual further testified that his doctor advised him that he only has between three and seven years to live if he does not stop drinking. Tr. at 34. According to the

---

<sup>4</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

<sup>5</sup> The only evidence that the individual submitted on this matter is his own testimony that he did not think that he was alcohol dependent because he only consumed alcohol when he “felt like it.” Tr. at 51. The individual’s viewpoint is not sufficient to overcome the opinion of a board-certified psychiatrist who outlined in detail the reasons why the individual is properly diagnosed as suffering from Substance Dependence as described in the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> edition, Text-Revised.

individual, his primary care physician “told him about AA” but he elected not to attend AA because he is very independent and prefers doing things on his own. *Id.* He added that he did not find AA meetings helpful in 2000 when he attended two to three meetings. *Id.*

The individual admitted that he is not currently in an inpatient or outpatient alcohol program. *Id.* at 33. He also advised that he does not see an alcohol counselor. *Id.* Under questioning, he revealed that his wife still consumes alcohol and while it is “kind of tough to sit there and watch my wife drink . . . I have to do it if I want to live.” *Id.* at 35. The individual also revealed that he has been around other people who consume alcohol and he is not bothered by it. *Id.* He asserted that he is fairly confident that he will be able to maintain his sobriety. *Id.*

In addition to his own testimony, the individual presented testimony from a supervisor who is also his nephew and two managers. All three witnesses attested to the individual’s excellent work. *Id.* at 8, 14, 27. The two managers testified that they had never seen him consume alcohol on the job and had never seen any indication that he consumed alcohol at all. *Id.* at 9-10; 28-19. The individual’s supervisor has socialized with the individual because of their family relationship. *Id.* at 14. The supervisor testified that he has observed the individual operate an All Terrain Vehicle on his own property while he was drunk. *Id.* at 18. However, the supervisor testified that he has not observed the individual consume alcohol in four to five months, *i.e.*, since July or August 2004.

After listening to the individual’s testimony and that of his managers and supervisor, the DOE consultant-psychiatrist was asked to opine about whether the individual could be considered rehabilitated or reformed from his alcohol dependence. The DOE consultant-psychiatrist testified that three months of abstinence is not sufficient for the individual to demonstrate rehabilitation or reformation. The DOE consultant-psychiatrist then opined that the individual must abstain for five years before he would consider the individual rehabilitated.<sup>6</sup>

After carefully considering the documentary and testimonial evidence in the record, I find that the individual has not shown that he is rehabilitated or reformed from his alcohol dependence. It is simply too early in the individual’s rehabilitative efforts for me to make a positive predictive assessment that he will maintain sobriety for a sustained period of time. As of the date of the hearing, the individual had only abstained from alcohol for a period of three months, a mark far removed from the five-year recommendation of the DOE consultant-psychiatrist in this case. Moreover, while it is possible that the individual might maintain his sobriety on his own, the record shows that he has tried unsuccessfully to do so in the past.<sup>7</sup> Moreover, the individual did not present any evidence that he has a

---

<sup>6</sup> In the Psychiatric Report, the DOE consultant-psychiatrist stated that there was “no evidence of rehabilitation or reform.” Ex. 6 at 1. He did not opine in the Psychiatric Report about the length and type of treatment that would be necessary to show adequate evidence of rehabilitation and reformation. *Id.*

<sup>7</sup> At the hearing, I questioned the DOE consultant-psychiatrist whether he thought that the individual’s motivation to maintain his sobriety in order to prolong his life should be entitled to considerable weight. Tr. at 72. The DOE consultant-psychiatrist opined that it is equally as possible that the individual will decide to enjoy life and resume drinking during the time that he has left. *Id.* at 75.

network of people or institutions that will help him maintain his abstinence. He testified that his wife still consumes alcohol in his presence, a factor that will most certainly test the individual's willpower in the future. The individual still socializes with persons who consume alcohol, another factor that could undermine his efforts to maintain sobriety. The individual also does not participate in AA, does not see an alcohol counselor, and does not anticipate receiving any kind of alcohol treatment. The individual also testified that he does not consider himself to be alcohol dependent, a factor that leads me to question whether he fully understands the severity of his alcohol problem. In short, the risk that the individual might return to consuming alcohol cannot be discounted. For all these reasons, I find that the individual has not mitigated the security concerns associated with his alcohol dependence.

## **B. Criterion K**

The individual testified that he has not used illegal drugs since December 2002 and that he does not intend to use illegal drugs in the future. *Id.* at 39, 61. To support his testimony, the individual submitted into the record the test results from a random drug test that he took on November 24, 2004 showing that he tested negative for five drugs. Ex. B.<sup>8</sup> The only other testimonial evidence relating to the Criterion K issue before me came from the individual's nephew and supervisor who testified that he never observed the individual using illegal drugs. *Id.* at 21.

At the hearing, the DOE consultant-psychiatrist was asked if the individual could be considered rehabilitated or reformed from his past drug use in light of the individual's self-reported abstinence since December 2002. The DOE consultant-psychiatrist testified that due to the extensive nature of the individual's illegal drug use over most of his lifetime, the individual would need more abstinence before he could be considered reformed. *Id.* at 79. In addition, the DOE consultant-psychiatrist opined that there is not sufficient information available for him to conclude that the individual is reformed from his past drug abuse.

After carefully considering the record in this case, I find that the individual has not come forward with evidence that convinces me that he has mitigated the Criterion K security concerns at issue. The extensive nature and frequency of the individual's drug use are uncontested and factors that weigh heavily against him. By his own account, the individual used a wide variety of illegal drugs, including marijuana, cocaine, Quaaludes, LSD, opium, hash, mushrooms, crack and amphetamines, at various times over a period of 25 years. During most of this time, the individual was a mature man in his 20s and 30s. I also find that the individual's conduct associated with his drug use is extremely serious and weighs against him. Not only was he arrested three times in the 1980s for drug-related incidents, but he admits to destroying evidence while the police were attempting to enter his premises on one occasion, and throwing cocaine into a briar patch on another occasion as he was fleeing from the police. In my opinion, these actions, while remote in time, are still quite troubling because they suggest to me that his deposition is unchanged

---

<sup>8</sup> The drugs tested are listed on the test form as THC, COC, PCP, OPI, and AMP. Ex. B. I presume that these initials stand for tetrahydrocannabinols, cocaine, phencyclidine, opium and amphetamines.

to try to conceal evidence or information to escape the consequences of his actions. On the issue of rehabilitation or reformation, there is only the individual's self-reported abstinence from illegal drugs since December 2002 and the one negative drug test. If true, the individual's abstinence from illegal drugs would be a positive factor in his favor. It is unfortunate that the individual did not ask his wife or others who may have observed him using drugs in the past to testify about their recent observations of him. I also considered as a negative factor that the individual used drugs in 2002 during a time when he knew his request for a DOE security clearance was pending. At the very least, his actions in this regard call into question his judgment. In the end, I agree with the DOE consultant-psychiatrist that there is insufficient information in the record to determine that the individual is rehabilitated or reformed from his past illegal drug use. It was the individual's burden to bring forward information to mitigate the Criterion K issue at hand. I find that he has failed to meet that burden.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria J and K. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the DOE. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be denied.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: January 27, 2005